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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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JUN 11 1996

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )  
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Implementation of the )  
Telecommunications Act of 1996: )  
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Telecommunications Carriers' Use )  
of Customer Proprietary Network )  
Information and Other )  
Customer Information )

CC Docket No. 96-115

**COMMENTS OF EXCEL TELECOMMUNICATIONS, INC.**

Excel Telecommunications, Inc. ("Excel"), by its attorney and pursuant to the Commission's Notice of Proposed Rulemaking released May 17, 1996 ("Notice")<sup>1</sup>, hereby submits its initial comments in the above-captioned proceeding.

**I. INTRODUCTION**

Excel is one of the fastest growing providers of long distance telecommunications services in the U.S. As a reseller which commenced operations in 1989, Excel provided service to approximately 1.9 million residential and small business customers as of December 31, 1995. The Company offers a variety of long distance services and products, including residential service, commercial service, 800 service, international services and calling cards. Excel's

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<sup>1</sup> In re Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, Notice of Proposed Rulemaking, FCC 96-221 (May 17, 1996).

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continuing growth has resulted in the company's recent participation in an initial public offering, and Excel is now traded on the New York Stock Exchange. As a reseller with a substantial customer base located throughout the country, Excel's operations stand to be impacted by the instant proceeding.

Excel supports the tentative conclusion reached in the Commission's Notice that regulations clarifying a carrier's obligations under Section 222 of the Telecommunications Act of 1996<sup>2</sup> would be in the public interest. Notice at ¶15. Excel's comments on the Commission's proposals with respect to such regulations follow.

## **II. EXCEL SUPPORTS THE COMMISSION'S PROPOSED RULES SUBJECT TO THE CLARIFICATIONS DISCUSSED BELOW**

The Notice seeks comment on the extent to which Section 222 permits states to impose additional customer proprietary network information ("CPNI") requirements. Notice at ¶17. As a general matter, Excel favors uniform national guidelines to the maximum extent possible. Compliance with potentially varying state requirements in addition to federal requirements can increase costs for carriers such as Excel which are trying to provide service at affordable prices. Excel also believes that the CPNI provisions of Section 222 and the data safeguard provisions of Section 275(d) by themselves "give the Commission jurisdiction over both the interstate and intrastate use and protection of CPNI and other customer information with respect to matters falling within the scope of those sections." Notice at ¶18. The Commission should infer that Congress' intent was that Sections 222 and 275(d) apply to both interstate and intrastate aspects

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<sup>2</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 ("1996 Act").

of privacy of customer information.<sup>3</sup> It would make little sense in terms of economics, technology or jurisdiction to distinguish between interstate and intrastate components for purposes of Section 222.

Excel concurs with the Commission's tentative conclusion that, under Section 222 of the 1996 Act, a carrier may not use CPNI obtained from the provision of one service for marketing or other purposes in connection with the provision of another service. See Notice at ¶21. The Commission's interpretation of Section 222(c)(1) is well-founded in the language of this provision. Excel, therefore, strongly disagrees with the alternative interpretation which would permit a provider of a telecommunications service to use CPNI obtained from any such service to market any other telecommunications service. The language of Section 222(c)(1) is narrower than this.

Excel also concurs with the Notice's tentative conclusion that Section 222(c)(1) should be read as distinguishing among telecommunications services based on traditional service distinctions. See Notice at ¶22. In particular, Excel also agrees with the Commission's proposal to treat the following services as distinct "telecommunications services": interexchange (including interstate, intrastate and international long distance offerings, as well as short-haul toll); local (including short-haul toll); and commercial mobile radio services. Id. Under this approach, CPNI obtained from providing any one of the discrete services listed above may not be used for any purpose, including marketing, involving any of the other services, unless the telecommunications carrier obtained prior customer authorization or one of the exceptions

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<sup>3</sup> See, e.g., Comments of Excel, CC Dkt. No. 96-98 (filed May 16, 1996); In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Notice of Proposed Rulemaking, FCC 96-182, para. 37 (Apr. 18, 1996).

established by Section 222 applies.

The Notice also seeks comment on whether customer notification can be given orally and simultaneously with a carrier's attempt to seek approval for CPNI use, or whether instead advance written notification should be required. Notice at ¶28. Excel favors advance written notice. Only advance notice can assure that customers, particularly residential customers, are adequately and properly informed of their CPNI rights. The significance of CPNI rights may not be readily comprehended by many customers. The topic is likely to be too complex to convey during a brief telephone call to an end user whose attention is focused on the purpose of the call.

Oral authorization is also flawed in that it is likely to lead to disputes with customers. Such disputes will hinge around customers which claim that they were not informed of their CPNI rights, and carriers which claim that they adequately notified such customers. A written notification which can be produced for evidentiary purposes, of course, is the only way to resolve such a dispute. Absent written notification, the Commission faces a deluge of consumer complaints, much like those that originated in connection with unauthorized conversions (*i.e.*, "slamming") stemming from telemarketing. As a result, Excel believes that the Commission should specify the minimum information that must be included in CPNI notifications--much like the Commission has specified the information that must be included on Letters of Agency ("LOAs") when converting customer accounts.<sup>4</sup>

The Commission also seeks comment as to authorization requirements. Notice at ¶¶29-

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<sup>4</sup> See In re Unauthorized Changes of Consumers' Long Distance Carriers, Report and Order, FCC 95-225 (June 13, 1995).

33. The same concerns Excel described above with respect to notification requirements apply to authorization requirements. Absent written notifications, unnecessary disputes will result, both frustrating consumers and incurring Commission and state public utilities commission resources. In Excel's view, it would be a mistake to allow carriers to choose to use outbound telemarketing programs to obtain oral "approval" from customers for use of their CPNI. Excel itself does not generally employ telemarketing to sign up new long distance customers because of the risk of misunderstanding it poses. Instead, Excel only employs written LOAs since they record the clear understanding reached between the customer and the company. Excel concurs with the Commission's statement that "[f]rom a consumer protection standpoint, written notification, which is more specific and verifiable than oral notification, may be preferable." Notice at ¶29. In short, Excel believes that allowing verbal authorization would amount to bad public policy which the Commission could come to regret.

The Notice inquires as to whether, in addition to the statutory requirements of Section 222, LECs should be required to notify others regarding the availability of aggregate CPNI, on a reasonable and nondiscriminatory basis, prior to using such aggregate CPNI themselves. Notice at ¶37. Excel supports this proposal. It clearly would be unlawfully discriminatory were LECs permitted to use aggregate CPNI, while other telecommunications carriers did not have access to such information. A "level playing field" necessitates the implementation of this proposal.

Excel agrees with the Commission's intention to continue to enforce the additional restrictions adopted in the Computer III<sup>5</sup> proceeding applicable to the Bell Operating Companies

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<sup>5</sup> See Notice at ¶3, n 9.

("BOCs"), GTE and AT&T pending the outcome of this proceeding. Notice at ¶38. These requirements were imposed on the basis of the record in the Computer III proceeding. The 1996 Act does not overturn that record nor necessarily obviate the need for such preexisting requirements. In fact, the Commission expressly concludes that "the 1996 Act does not prohibit the Commission from enforcing CPNI requirements that are not inconsistent with the new statutory provisions, since nothing in the 1996 Act affects these requirements." Notice at ¶38. Accordingly, they should remain applicable to AT&T, the BOCs and GTE.<sup>6</sup>

On the basis of the same reasoning, Excel supports the Commission's proposal not to extend the pre-existing Computer III CPNI requirements to other telecommunications carriers. See Notice at ¶40. The pre-existing Computer III requirements were applied only to the BOCs, GTE and AT&T on the basis of the specific record in that proceeding, and no basis whatsoever has been shown to exist to apply such requirements to other competitive carriers.

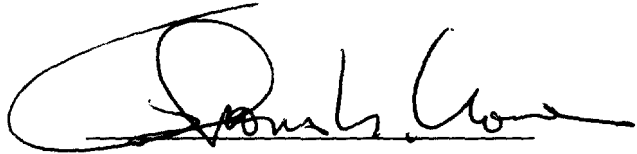
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<sup>6</sup> Although the Notice tentatively concludes that all telecommunications carriers must establish effective safeguards to protect against unauthorized access to CPNI by third parties, Excel concurs with the Notice's conclusion that it should not now specify safeguard requirements for carriers. Notice at ¶¶35-36. Excel believes that the pre-existing computerized safeguard requirements and manual file indicators applied to AT&T, the BOCs and GTE in Computer III should continue to apply to these companies.

### **III. CONCLUSION**

As demonstrated above, Excel supports the Notice's proposals subject to the qualifications discussed above.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Thomas K. Crowe", written over a horizontal line.

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